

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 248

HOUSE BILL 2478

AN ACT

AMENDING SECTION 45-105, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-107.01; AMENDING SECTION 45-544, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-547; RELATING TO THE DEPARTMENT OF WATER RESOURCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-105, Arizona Revised Statutes, is amended to read:

45-105. Powers and duties of director

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information which the director deems advisable.

3. Collect and investigate information upon and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3 and contract, act jointly or cooperate with any person to carry out the provisions and purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board,

1 congressional hearings, court hearings or hearings of other competent
2 judicial or quasi-judicial departments, agencies or organizations, and
3 negotiate and cooperate with agencies of the United States or of any state
4 or government and represent this state concerning matters within the
5 department's jurisdiction.

6 11. Apply for and hold permits and licenses from the United States or
7 any agency of the United States for reservoirs, dam sites and rights-of-way.

8 12. Receive and review all reports, proposed contracts and agreements
9 from and with the United States or any agencies, other states or governments
10 or their representatives and recommend to the governor and the legislature
11 action to be taken on such reports, proposed contracts and agreements. The
12 director shall take action on such reports, if authorized by law, and review
13 and coordinate the preparation of formal comments of this state on both the
14 preliminary and final reports relating to water resource development of the
15 United States army corps of engineers, the secretary of the interior and the
16 secretary of agriculture, as provided for in the flood control act of 1944
17 (58 Stat. 887; 33 United States Code section 701.1).

18 13. Contract with any person for imported water or for the acquisition
19 of water rights or rights to withdraw, divert or use surface water or
20 groundwater as necessary for the performance of the groundwater management
21 functions of the director prescribed by chapter 2 of this title. If water
22 becomes available under any contract executed under this paragraph, the
23 director may contract with any person for its delivery or exchange for any
24 other water available.

25 14. Recommend to the administrative heads of agencies, boards and
26 commissions of this state, and political subdivisions of this state, rules
27 to promote and protect the rights and interests of this state and its
28 inhabitants in any matter relating to the surface water and groundwater in
29 this state.

30 15. Conduct feasibility studies and remedial investigations relating
31 to groundwater quality and enter into contracts and cooperative agreements
32 under section 104 of the comprehensive environmental response, compensation,
33 and liability act of 1980 (P.L. 96-510) to conduct such studies and
34 investigations.

35 16. Dispose informally by stipulation, agreed settlement, consent order
36 or alternative means of dispute resolution, including arbitration, if the
37 parties and director agree, or by default of any case in which a hearing
38 before the director is required or allowed by law.

39 17. Cooperate and coordinate with the appropriate governmental entities
40 in Mexico regarding water planning in areas near the border between Mexico
41 and Arizona and for the exchange of relevant hydrological information.

42 B. The director shall:

43 1. Exercise and perform all powers and duties vested in or imposed
44 upon the department and adopt and issue rules necessary to carry out the
45 purposes of this title.

1 2. Administer all laws relating to groundwater, as provided in this
2 title.

3 3. Be responsible for the supervision and control of reservoirs and
4 dams of this state and, when deemed necessary, conduct investigations to
5 determine if the existing or anticipated condition of any dam or reservoir
6 in this state is or may become a menace to life and property.

7 4. Coordinate and confer with and may contract with:

8 (a) The Arizona power authority, game and fish commission, state land
9 department, Arizona outdoor recreation coordinating commission, department
10 of commerce, radiation regulatory agency, active management area water
11 authorities or districts and political subdivisions of this state with
12 respect to matters within their jurisdiction relating to surface water and
13 groundwater and the development of state water plans.

14 (b) The department of environmental quality with respect to title 49,
15 chapter 2 for its assistance in the development of state water plans.

16 (c) The department of environmental quality regarding water plans,
17 water resource planning, water management, wells, water rights and permits,
18 and other appropriate provisions of this title pertaining to remedial
19 investigations, feasibility studies, site prioritization, selection of
20 remedies and implementation of the water quality assurance revolving fund
21 program pursuant to title 49, chapter 2, article 5.

22 (d) The department of environmental quality regarding coordination of
23 data bases that are necessary for activities conducted pursuant to title 49,
24 chapter 2, article 5.

25 5. Cooperate with the Arizona power authority in the performance of
26 the duties and functions of the authority.

27 6. Maintain a permanent public depository for existing and future
28 records of stream flow, groundwater levels and water quality and other data
29 relating to surface water and groundwater.

30 7. Maintain a public docket of all matters before the department which
31 may be subject to judicial review pursuant to this title.

32 8. Investigate and take appropriate action upon any complaints
33 alleging withdrawals, diversions, impoundments or uses of surface water or
34 groundwater that may violate this title or the rules adopted pursuant to this
35 title.

36 9. Report to and consult with the Arizona water resources advisory
37 board at regular intervals.

38 10. Adopt an official seal for the authentication of records, orders,
39 rules and other official documents and actions.

40 11. Provide staff support to the Arizona water protection fund
41 commission established pursuant to chapter 12 of this title.

42 12. Exercise and perform all powers and duties invested in the
43 chairperson of the Arizona water banking authority commission as prescribed
44 by chapter 14 of this title.

1 13. Provide staff support to the Arizona water banking authority
2 established pursuant to chapter 14 of this title.

3 14. IN THE YEAR FOLLOWING EACH REGULAR GENERAL ELECTION, PRESENT
4 INFORMATION TO THE COMMITTEES WITH JURISDICTION OVER WATER ISSUES IN THE
5 HOUSE OF REPRESENTATIVES AND THE SENATE. A WRITTEN REPORT IS NOT REQUIRED
6 BUT THE PRESENTATION SHALL INCLUDE INFORMATION CONCERNING THE FOLLOWING:

7 (a) THE CURRENT STATUS OF THE WATER SUPPLY IN THIS STATE AND ANY LIKELY
8 CHANGES IN THAT STATUS.

9 (b) ISSUES OF REGIONAL AND LOCAL DROUGHT EFFECTS, SHORT-TERM AND
10 LONG-TERM DROUGHT MANAGEMENT EFFORTS AND THE ADEQUACY OF DROUGHT PREPARATION
11 THROUGHOUT THE STATE.

12 (c) THE STATUS OF CURRENT WATER CONSERVATION PROGRAMS IN THIS STATE.

13 (d) THE CURRENT STATE OF EACH ACTIVE MANAGEMENT AREA AND THE LEVEL OF
14 PROGRESS TOWARD MANAGEMENT GOALS IN EACH ACTIVE MANAGEMENT AREA.

15 (e) ISSUES AFFECTING MANAGEMENT OF THE COLORADO RIVER AND THE
16 RELIABILITY OF THIS STATE'S TWO MILLION EIGHT HUNDRED THOUSAND ACRE-FOOT
17 ALLOCATION OF COLORADO RIVER WATER, INCLUDING THE STATUS OF WATER SUPPLIES
18 IN AND ISSUES RELATED TO THE COLORADO RIVER BASIN STATES AND MEXICO.

19 (f) THE STATUS OF ANY PENDING OR LIKELY LITIGATION REGARDING SURFACE
20 WATER ADJUDICATIONS OR OTHER WATER RELATED LITIGATION AND THE POTENTIAL
21 IMPACTS ON THIS STATE'S WATER SUPPLIES.

22 (g) THE STATUS OF INDIAN WATER RIGHTS SETTLEMENTS AND RELATED
23 NEGOTIATIONS THAT AFFECT THIS STATE.

24 (h) OTHER MATTERS RELATED TO THE RELIABILITY OF THIS STATE'S WATER
25 SUPPLIES, THE RESPONSIBILITIES OF THE DEPARTMENT AND THE ADEQUACY OF THE
26 DEPARTMENT'S AND OTHER ENTITIES' RESOURCES TO MEET THIS STATE'S WATER
27 MANAGEMENT NEEDS.

28 Sec. 2. Title 45, chapter 1, article 1, Arizona Revised Statutes, is
29 amended by adding section 45-107.01, to read:

30 45-107.01. Waiver of rights to return flow credits

31 BEFORE THE BEGINNING OF EACH ACCOUNTING YEAR ON THE COLORADO RIVER, THE
32 DIRECTOR MAY CONSIDER A REQUEST BY THE SECRETARY OF THE INTERIOR OR THE
33 SECRETARY'S DESIGNATED REPRESENTATIVE TO WAIVE RIGHTS HELD BY THIS STATE TO
34 RETURN FLOW CREDITS FOR COLORADO RIVER WATER TO THE EXTENT THAT WATER IS
35 RETURNED TO THE COLORADO RIVER PURSUANT TO A PERMIT ISSUED TO THE SECRETARY
36 UNDER SECTION 45-547. THE DIRECTOR MAY GRANT THE REQUEST ON AN ANNUAL BASIS,
37 ON BEHALF OF THIS STATE, IF ALL OF THE FOLLOWING APPLY:

38 1. THE SECRETARY HOLDS A PERMIT ISSUED UNDER SECTION 45-547.

39 2. THE SECRETARY WILL USE THE WATER ADDED TO THE COLORADO RIVER AS A
40 PORTION OF THE NATIONAL OBLIGATION TO PROVIDE REPLACEMENT WATER FOR THE
41 SPECIFIC PURPOSES OF REPLACEMENT OF THE REJECT STREAM FROM THE YUMA DESALTING
42 PLANT, AND OF ANY WELLTON-MOHAWK DRAINAGE WATER BYPASSED TO THE SANTA CLARA
43 SLOUGH TO SATISFY THE REQUIREMENTS OF MINUTE 242 OF THE INTERNATIONAL
44 BOUNDARY AND WATER COMMISSION FOR THE UNITED STATES AND MEXICO THAT WAS
45 CONCLUDED PURSUANT TO THE MEXICAN WATER TREATY OF FEBRUARY 3, 1944.

1 3. THE SECRETARY EXPRESSLY AGREES THAT THE WAIVER GRANTED ON BEHALF
2 OF THIS STATE UNDER THIS SECTION DOES NOT IN ANY WAY LIMIT OR IMPAIR THE
3 RIGHTS OF THIS STATE TO COLORADO RIVER WATER EXCEPT FOR THE SPECIFIC QUANTITY
4 OF WATER IN THE SPECIFIC YEAR FOR WHICH THE WAIVER IS GRANTED.

5 4. NO PERSON IN ARIZONA HAS APPLIED FOR AND OBTAINED A PERMIT UNDER
6 SECTION 45-547 THAT WOULD ALLOW THE RETURN FLOW CREDIT TO BE FULLY USED TO
7 INCREASE THE BENEFICIAL USE OF WATER IN THIS STATE. IF OTHER PERMITS HAVE
8 BEEN ISSUED UNDER SECTION 45-547 THAT WOULD ALLOW THE RETURN FLOW CREDIT TO
9 BE PARTIALLY USED TO INCREASE THE BENEFICIAL USE OF WATER IN THIS STATE, THE
10 DIRECTOR MAY GRANT THE SECRETARY THE WAIVER FOR ONLY THAT AMOUNT OF THE
11 RETURN FLOW CREDIT THAT WILL NOT BE USED TO INCREASE THE BENEFICIAL USE OF
12 WATER IN THIS STATE.

13 5. THE DIRECTOR FINDS THAT GRANTING THE WAIVER WILL NOT IMPAIR THE
14 RIGHTS OF THIS STATE OR ANY HOLDER IN THIS STATE OF A WATER DELIVERY CONTRACT
15 ENTERED INTO PURSUANT TO SECTION 5 OF THE BOULDER CANYON PROJECT ACT OF 1928
16 (45 STAT. 1060; 43 UNITED STATES CODE SECTION 617d) TO COLORADO RIVER WATER.

17 Sec. 3. Section 45-544, Arizona Revised Statutes, is amended to read:

18 45-544. Transportation in areas not subject to active
19 management; damages; Little Colorado river plateau
20 and Parker groundwater basins; definitions

21 A. Except as otherwise provided in this section, SECTION 45-547 and
22 article 8.1 of this chapter, in areas outside of active management areas:

23 1. Groundwater may be transported:

24 (a) Within a ~~sub-basin~~ SUBBASIN of a groundwater basin or within a
25 groundwater basin, if there are no ~~sub-basins~~ SUBBASINS, without payment of
26 damages.

27 (b) Between ~~sub-basins~~ SUBBASINS of a groundwater basin, subject to
28 payment of damages.

29 2. Groundwater may not be transported away from a groundwater basin.

30 B. Notwithstanding subsection A, paragraph 2 of this section subject
31 to payment of damages:

32 1. A person who at any time during the twelve months before January
33 1, 1991 was transporting away from the Little Colorado river plateau
34 groundwater basin or the Parker groundwater basin groundwater that was
35 legally withdrawn from a well in either groundwater basin has the right,
36 subject to subsection C of this section, to transport groundwater that is
37 legally withdrawn from the well or a replacement well in approximately the
38 same location to another groundwater basin in an annual amount equal to the
39 greater of the maximum amount of groundwater either:

40 (a) That was withdrawn from the well and transported by the person
41 away from the groundwater basin in any one of the five calendar years
42 immediately preceding January 1, 1991.

43 (b) That could have been withdrawn from the well during the twelve
44 month period, taking into account the pump capacity and specific capacity of
45 the well during that period, or twenty-five acre-feet, whichever is less.

1 2. A person may transport groundwater by motor vehicle from the Little
2 Colorado river plateau groundwater basin or the Parker groundwater basin to
3 an adjacent groundwater basin for domestic purposes or stock watering.

4 3. A city or town whose service area is located either in the Little
5 Colorado river plateau groundwater basin and an adjacent groundwater basin
6 or in the Parker groundwater basin and an adjacent groundwater basin may
7 transport groundwater that is withdrawn within that portion of its service
8 area located in the Little Colorado river plateau groundwater basin or the
9 Parker groundwater basin to the adjacent groundwater basin for the benefit
10 of landowners and residents within its service area.

11 4. A city, town or private water company whose service area is located
12 in two adjacent groundwater basins and provides water utility service to
13 landowners or residents in both basins as of July 1, 1993, may transport
14 groundwater between those adjacent groundwater basins.

15 5. The transportation of groundwater in which groundwater is
16 transported away from the groundwater basin and expansions of that transfer
17 by the same person or its successor for the same purpose are valid if that
18 transfer was occurring before September 1, 1993.

19 6. Groundwater may be transported away from a groundwater basin for
20 mineral extraction and processing, except that no groundwater may be
21 transported away from the Parker groundwater basin or the Little Colorado
22 river plateau groundwater basin for that purpose.

23 C. The director may limit by order the amount of groundwater withdrawn
24 from a well in the Little Colorado river plateau groundwater basin for
25 transportation away from the basin pursuant to subsection B, paragraph 1 of
26 this section in any year in which the director determines that the projected
27 withdrawals from the well for that purpose will unreasonably increase damage
28 to surrounding land or other water users and if the well:

29 1. Was drilled on or before January 1, 1991.

30 2. Was not completed on January 1, 1991, but a notice of intention to
31 drill the well was on file on that date.

32 3. Is a replacement well, in approximately the same location, for a
33 well described in paragraph 1 or 2 of this subsection.

34 D. Groundwater may be withdrawn from a well drilled in the Little
35 Colorado river plateau groundwater basin after January 1, 1991, except a
36 replacement well in approximately the same location or a well drilled after
37 that date pursuant to a notice of intention to drill that was on file with
38 the department on that date, for transportation away from the basin pursuant
39 to subsection B, paragraph 1 of this section only if the location of the well
40 complies with the rules adopted pursuant to section 45-598, subsection A to
41 prevent unreasonably increasing damage to surrounding land or other water
42 users from the concentration of wells.

43 E. For THE purposes of this section:

44 1. "Domestic purposes" means uses related to the supply, service and
45 activities of households and private residences and includes the application

1 of water to less than two acres of land to produce plants or parts of plants
2 for sale or human consumption, or for use as feed for livestock, range
3 livestock or poultry, as such terms are defined in section 3-1201.

4 2. "Stock watering" means the watering of livestock, range livestock
5 or poultry, as such terms are defined in section 3-1201.

6 Sec. 4. Title 45, chapter 2, article 8, Arizona Revised Statutes, is
7 amended by adding section 45-547, to read:

8 45-547. Transportation of groundwater withdrawn in the Yuma
9 basin; permit

10 A. GROUNDWATER MAY BE WITHDRAWN IN THE YUMA BASIN FOR DIRECT OR
11 INDIRECT TRANSPORTATION OUTSIDE OF THE BASIN, INCLUDING TRANSPORTATION TO AN
12 INITIAL ACTIVE MANAGEMENT AREA, ONLY IF A PERMIT IS OBTAINED FROM THE
13 DIRECTOR PURSUANT TO THIS SECTION.

14 B. A PERSON WHO HAS THE LEGAL RIGHT TO DIVERT AND USE COLORADO RIVER
15 WATER MAY APPLY TO THE DIRECTOR FOR A PERMIT TO WITHDRAW GROUNDWATER IN THE
16 YUMA BASIN FOR DIRECT OR INDIRECT TRANSPORTATION OUTSIDE OF THE BASIN,
17 INCLUDING TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA. THE DIRECTOR
18 MAY ISSUE THE PERMIT IF ALL OF THE FOLLOWING APPLY:

19 1. THE WATER TO BE WITHDRAWN WAS ORIGINALLY COLORADO RIVER WATER
20 APPLIED FOR IRRIGATION PURPOSES.

21 2. THE WATER TO BE PUMPED IS GROUNDWATER UNDER ARIZONA LAW THAT IS
22 CAUSING WATERLOGGING TO THE DETRIMENT OF AGRICULTURAL OPERATIONS OR MUNICIPAL
23 INFRASTRUCTURE IN THE YUMA BASIN.

24 3. NO PERSON IS CURRENTLY PUMPING OR WILL PUMP THE WATER FOR USE IN
25 THE YUMA BASIN DURING THE TERM OF THE PERMIT.

26 4. ISSUANCE OF THE PERMIT WILL RESULT IN WATER BEING RETURNED TO THE
27 COLORADO RIVER THAT OTHERWISE WOULD NOT HAVE RETURNED.

28 5. ANY IRRIGATION DISTRICT OR WATER USERS' ASSOCIATION IN THE YUMA
29 BASIN THAT HAS A CONTRACTUAL RIGHT WITH THE SECRETARY OF THE INTERIOR FOR A
30 RETURN FLOW CREDIT FOR THE WATER RETURNED TO THE RIVER PURSUANT TO THE PERMIT
31 HAS WAIVED THAT RIGHT.

32 6. THE PERMITTEE WILL COMPLY WITH ALL FEDERAL LAWS AND TREATIES AND
33 STATE LAWS REGARDING RETURNING THE WATER TO THE COLORADO RIVER.

34 7. IF THE GROUNDWATER WILL BE PUMPED FROM WELLS WITHIN THE EXTERIOR
35 BOUNDARIES OF AN IRRIGATION DISTRICT OR WATER USERS' ASSOCIATION, THAT
36 IRRIGATION DISTRICT OR WATER USERS' ASSOCIATION HAS CONSENTED TO THE ISSUANCE
37 OF THE PERMIT.

38 8. IF THE GROUNDWATER WILL BE PUMPED FROM WELLS WITHIN THE CITY LIMITS
39 OF A CITY OR TOWN THAT HOLDS AN ENTITLEMENT TO COLORADO RIVER WATER, THAT
40 CITY OR TOWN HAS NOT OBJECTED TO THE ISSUANCE OF THE PERMIT.

41 9. IF THE APPLICANT IS THE UNITED STATES OR AN AGENT OR AGENCY OF THE
42 UNITED STATES, THE WATER TRANSPORTED PURSUANT TO THE PERMIT WILL BE USED AS
43 REPLACEMENT WATER FOR THE SPECIFIC PURPOSES IDENTIFIED IN SECTION 45-107.01,
44 PARAGRAPH 2.

1 C. AN APPLICANT FOR A PERMIT ISSUED UNDER THIS SECTION SHALL APPLY TO
2 THE DIRECTOR IN WRITING AND SHALL SUBMIT ALL EVIDENCE NECESSARY TO ESTABLISH
3 THAT THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION APPLY, INCLUDING A
4 HYDROLOGIC STUDY. THE DIRECTOR SHALL REVIEW THE APPLICATION AND DETERMINE
5 WITHIN ONE HUNDRED DAYS OF RECEIPT OF THE APPLICATION WHETHER IT IS
6 ADMINISTRATIVELY COMPLETE. THE DIRECTOR SHALL COMPLETE THE SUBSTANTIVE
7 REVIEW OF THE APPLICATION AND SHALL ISSUE OR DENY THE PERMIT WITHIN NINE
8 MONTHS OF DETERMINING THE APPLICATION TO BE ADMINISTRATIVELY COMPLETE.

9 D. IF THE APPLICATION IS DETERMINED TO BE ADMINISTRATIVELY COMPLETE,
10 THE DIRECTOR, WITHIN FIFTEEN DAYS OF THAT DETERMINATION, SHALL GIVE NOTICE
11 OF THE APPLICATION ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER
12 OF GENERAL CIRCULATION IN YUMA, LA PAZ AND MOHAVE COUNTIES. THE DIRECTOR
13 SHALL ALSO GIVE FIRST CLASS MAIL NOTICE OF THE APPLICATION TO EACH CITY,
14 TOWN, PRIVATE WATER COMPANY, IRRIGATION DISTRICT, WATER USERS' ASSOCIATION
15 AND ELECTRICAL DISTRICT WITHIN YUMA COUNTY AND TO ANY MULTICOUNTY WATER
16 CONSERVATION DISTRICT AS DEFINED IN SECTION 48-3701. THE NOTICE SHALL STATE
17 THAT PERSONS ADVERSELY AFFECTED BY THE WITHDRAWAL OF GROUNDWATER IN THE YUMA
18 BASIN AND THE TRANSPORTATION OF THAT WATER MAY FILE WRITTEN OBJECTIONS TO THE
19 ISSUANCE OF THE PERMIT WITH THE DIRECTOR WITHIN FIFTEEN DAYS AFTER THE LAST
20 PUBLICATION OF THE NOTICE. AN OBJECTION SHALL STATE THE NAME AND MAILING
21 ADDRESS OF THE OBJECTOR, SHALL BE SIGNED BY THE OBJECTOR OR THE OBJECTOR'S
22 AGENT OR ATTORNEY AND SHALL CLEARLY SET FORTH THE REASONS WHY THE PERMIT
23 SHOULD NOT BE ISSUED. THE GROUNDS FOR OBJECTION ARE LIMITED TO WHETHER THE
24 APPLICATION MEETS THE CRITERIA FOR ISSUING THE PERMIT AS PRESCRIBED BY
25 SUBSECTION B OF THIS SECTION.

26 E. IF THE DIRECTOR DEEMS A HEARING NECESSARY OR IF A PROPER OBJECTION
27 TO THE PERMIT APPLICATION HAS BEEN FILED, AN ADMINISTRATIVE HEARING SHALL BE
28 HELD BEFORE THE DIRECTOR'S DECISION ON THE APPLICATION. AT LEAST THIRTY DAYS
29 BEFORE THE HEARING, THE DIRECTOR SHALL NOTIFY THE APPLICANT AND ANY PERSON
30 WHO FILED A PROPER OBJECTION TO THE ISSUANCE OF THE PERMIT. THE HEARING
31 SHALL BE SCHEDULED FOR AT LEAST NINETY DAYS BUT NO MORE THAN ONE HUNDRED
32 TWENTY DAYS AFTER THE EXPIRATION OF THE TIME IN WHICH TO FILE OBJECTIONS. IF
33 AN ADMINISTRATIVE HEARING IS HELD, IT SHALL BE HELD IN THE YUMA BASIN.

34 F. A PERMIT UNDER THIS SECTION SHALL CONTAIN THAT INFORMATION
35 DETERMINED TO BE NECESSARY BY THE DIRECTOR AND MAY INCLUDE ANY CONDITION
36 DETERMINED BY THE DIRECTOR TO BE CONSISTENT WITH THIS SECTION OR NECESSARY
37 TO PROTECT THE INTERESTS OF THIS STATE AND THE WATER USERS OF THE YUMA BASIN.
38 THE DIRECTOR MAY ISSUE A PERMIT UNDER THIS SECTION FOR A PERIOD OF NOT MORE
39 THAN TEN YEARS AND, ON THE DIRECTOR'S INITIATIVE OR THE REQUEST OF A WATER
40 USER IN THE YUMA BASIN, MAY REVIEW THE PERMIT TO ENSURE THAT THE REQUIREMENTS
41 OF SUBSECTION B OF THIS SECTION CONTINUE TO APPLY. IF THE REQUIREMENTS NO
42 LONGER APPLY, THE DIRECTOR MAY REVOKE THE PERMIT. ON THE REQUEST OF THE
43 PERMIT HOLDER, THE DIRECTOR MAY RENEW THE PERMIT IF THE DIRECTOR DETERMINES
44 THAT THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION APPLY. THE DIRECTOR
45 SHALL MONITOR WITHDRAWALS OF GROUNDWATER PURSUANT TO PERMITS ISSUED UNDER

1 THIS SECTION AND SHALL TERMINATE A PERMIT IF THE STATIC GROUNDWATER LEVEL AT
2 THE LOCATION OF WATERLOGGING IDENTIFIED IN THE PERMIT REACHES A DEPTH GREATER
3 THAN TWENTY FEET BELOW LAND SURFACE OR THE CONDITIONS SPECIFIED IN SUBSECTION
4 B, PARAGRAPH 2 OF THIS SECTION FOR ISSUANCE OF THE PERMIT NO LONGER APPLY.

5 G. ISSUANCE OF A PERMIT UNDER THIS SECTION TO THE UNITED STATES, AN
6 AGENT OR AGENCY OF THE UNITED STATES OR ANY OTHER PERSON SHALL NOT PRECLUDE
7 ISSUANCE OF A PERMIT TO ANY OTHER ELIGIBLE APPLICANT TO TRANSPORT WATER FOR
8 USE WITHIN THIS STATE.

9 H. BEFORE OCTOBER 1 OF EACH YEAR, EACH PERMIT HOLDER SHALL FILE A
10 WRITTEN STATEMENT OF INTENT WITH THE DIRECTOR STATING THE QUANTITY OF
11 GROUNDWATER THE PERMIT HOLDER INTENDS TO WITHDRAW AND TRANSPORT PURSUANT TO
12 ITS PERMIT DURING THE NEXT CALENDAR YEAR. A PERMIT HOLDER WHO FAILS TO
13 SUBMIT A WRITTEN STATEMENT OF INTENT ON OR BEFORE OCTOBER 1 OF ANY YEAR SHALL
14 NOT WITHDRAW OR TRANSPORT ANY GROUNDWATER PURSUANT TO ITS PERMIT IN THE
15 FOLLOWING CALENDAR YEAR. A PERMIT HOLDER WHO FILES A STATEMENT OF INTENT
16 SHALL NOT WITHDRAW AND TRANSPORT AN AMOUNT OF GROUNDWATER GREATER THAN THAT
17 REPORTED ON ITS STATEMENT OF INTENT. IF, BASED ON THE STATEMENTS OF INTENT,
18 THE DIRECTOR DETERMINES THAT THERE IS INSUFFICIENT GROUNDWATER AVAILABLE TO
19 ALLOW WITHDRAWAL OF THE TOTAL AMOUNT REPORTED IN THE STATEMENTS OF INTENT
20 FILED BY ALL PERMIT HOLDERS, THE DIRECTOR SHALL, ON OR BEFORE DECEMBER 1,
21 SEND NOTICE BY FIRST CLASS MAIL TO ALL PERMIT HOLDERS WHO FILED A STATEMENT
22 OF INTENT. THE NOTICE SHALL STATE THAT THE DIRECTOR SHALL ALLOCATE THE
23 GROUNDWATER AVAILABLE TO EACH PERMIT HOLDER, UP TO THE AMOUNT REPORTED IN THE
24 STATEMENT OF INTENT, ACCORDING TO EACH PERMIT HOLDER'S PRIORITY TO DIVERT AND
25 USE COLORADO RIVER WATER, EXCEPT THAT THE DIRECTOR MAY ALLOCATE THE
26 GROUNDWATER IN ACCORDANCE WITH A WRITTEN AGREEMENT SIGNED BY ALL PERMIT
27 HOLDERS WHO FILED A STATEMENT OF INTENT.

28 Sec. 5. Drought emergency groundwater transfer

29 A. Notwithstanding section 45-544, subsection A, paragraph 2, Arizona
30 Revised Statutes, in areas outside of active management areas, groundwater
31 may be transported away from a groundwater basin on application to and
32 approval by the director of the department of water resources. The director
33 shall post the application on the department's web site before approving the
34 application.

35 B. The director of the department of water resources shall approve a
36 request to transport groundwater away from a groundwater basin outside of an
37 active management area if the director finds that all of the following apply:

38 1. The governor has declared an emergency due to lack of precipitation
39 or a water shortage pursuant to section 35-192, Arizona Revised Statutes.

40 2. The groundwater to be transported shall be withdrawn from a well
41 that is in existence as of the date of the governor's declaration of
42 emergency.

43 3. If the groundwater to be transported shall be withdrawn from a well
44 within the incorporated area of a city or town, the city or town has
45 consented to the groundwater withdrawal.

1 4. If the groundwater to be transported shall be withdrawn from a well
2 within the boundaries of a political subdivision, however designated,
3 established pursuant to title 48, chapter 17 or 19, Arizona Revised Statutes,
4 the political subdivision has consented to the groundwater withdrawal.

5 5. If the groundwater to be transported shall be withdrawn from a well
6 within the boundaries of a county for use in another county, the county from
7 which the groundwater shall be withdrawn has consented to the groundwater
8 withdrawal.

9 6. The groundwater to be transported shall be transported only by
10 motor vehicle or train.

11 7. The groundwater transportation is necessary to provide water
12 supplies for domestic, stock watering or potable municipal water service
13 purposes in a location included in the emergency declaration.

14 8. The groundwater to be transported shall only be used for domestic,
15 stock watering or potable municipal water service purposes.

16 9. The county, city, town or other political subdivision within which
17 the transported water is to be used has implemented an emergency conservation
18 plan sufficient to prevent nonessential use of the groundwater.

19 10. The groundwater to be transported shall not be used in an active
20 management area.

21 C. If the director of the department of water resources approves the
22 request to transport groundwater away from a groundwater basin outside of an
23 active management area pursuant to subsection B of this section, the approval
24 is valid for six months, or until the director determines that the
25 groundwater transportation is no longer necessary to provide water supplies
26 for domestic, stock watering or potable municipal water service purposes in
27 a location experiencing a water shortage. On request, the director may
28 extend the approval of the groundwater transportation for one additional
29 six-month period on the expiration of the original approval period, if the
30 director determines that all of the requirements of subsection B of this
31 section continue to apply. On expiration or revocation of the approval to
32 transport groundwater, the transportation of the groundwater shall
33 immediately cease.

34 D. The director of the department of water resources shall approve or
35 deny a request to transport groundwater away from a groundwater basin outside
36 of an active management area within thirty days of the receipt of the
37 request. Title 41, chapter 6, article 7.1, Arizona Revised Statutes, does
38 not apply to this act.

39 E. Groundwater transported away from a groundwater basin outside of
40 an active management area pursuant to this act is subject to the payment of
41 damages.

42 F. Water transported pursuant to this section shall not be transported
43 to subsidize insufficient supplies due to continued growth or deficient base
44 water supplies.

1 Sec. 6. Legislative intent

2 It is the intent of this legislature by this act to provide interim
3 water use for true emergencies and to provide for continued access to
4 information regarding the short-term and long-term status of water supplies
5 and water management in this state.

6 Sec. 7. Delayed repeal

7 Section 5 of this act is repealed on April 30, 2004.

8 Sec. 8. Emergency

9 This act is an emergency measure that is necessary to preserve the
10 public peace, health or safety and is operative immediately as provided by
11 law.

APPROVED BY THE GOVERNOR MAY 21, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 21, 2003.

Passed the House March 4, 2003,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Norman L. Fyfe
Chief Clerk of the House

Passed the Senate May 1, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmine Ballinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2478

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 14, 2003,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting
With Emergency
Jake Flake
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of May, 2003

at 8:25 o'clock A M.

Sandra Hamrick
Secretary to the Governor

Approved this 21 day of

May, 2003,

at 2³⁰ o'clock P. M.

Jon Kyl
Governor of Arizona

H.B. 2478

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 21 day of May, 2003

at 3:57 o'clock P. M.

Janice L. Brewer
Secretary of State